

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 815 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 No
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STATE OF GUJARAT

Versus

C V DHULIYA

Appearance:

Mr.Nigam Shukla, Addl.PUBLIC PROSECUTOR for Petitioner
MR PM THAKKAR for Respondent No. 1(Absent)

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 26/08/96

ORAL JUDGEMENT

The State of Gujarat has preferred this application under Article 227 of the Constitution of India challenging the orders passed by the learned Chief

Judicial Magistrate, Junagadh on 13.6.1989 discharging the respondent-original accused No.3 under section 239 of the Code of Criminal Procedure for the offences under sections 120B,420,465,467 and 34 of the Indian Penal Code and the order dated 27.3.1996 passed by the learned Additional Sessions Judge, Junagadh in Criminal Revision Application No.107 of 1989, confirming the order passed by the learned Chief Judicial Magistrate, Junagadh.

A Criminal Case No.666/87 for the offence of criminal conspiracy, cheating and forgery was filed against the respondent-accused and other six accused persons alleging illegality in the new SSC examination held in 1983-84, in the Court of the Chief Judicial Magistrate at Junagadh. It was alleged that the respondent-accused who was the Principal of Vivekanand High School committed criminal conspiracy and cheating and also forgery by collecting Rs.2000/- from some students for changing answer books of SSC Examination and thereby committed offences punishable under sections 120B,420,465,467 read with section 34 of the Indian Penal Code. The charge-sheet in respect of C.R.No.96/84 was submitted against the respondent-accused and other accused persons.

The respondent by his application Exh.9 requested the learned Chief Judicial Magistrate to discharge him on the ground that there was no prima facie case against him, inasmuch as the accused was not any officer or in charge of any affairs of the SSC Board, nor his name was disclosed in the complaint nor he was Supervisor of Conductor in the examination. The respondent-accused also contended that no case is made out in the statement of Hareshkumar Rasiklal Joshi recorded under section 164 of the Code of Criminal Procedure.

The learned Magistrate having considered the materials on record and on hearing the parties, ordered to discharge the respondent-accused under section 239 of the Code of Criminal Procedure in respect of the offences with which he was charged. The petitioner-State being aggrieved by the said order dated 13.6.1989 passed by the learned Chief Judicial Magistrate, Junagadh discharging the respondent-accused, preferred Criminal Revision Application No.107 Of 1989 in the Sessions Court at Junagadh. The learned Additional Sessions Judge, Junagadh, who heard and disposed of the said Revision Application, dismissed the Revision Application confirming the order

of discharge passed by the learned Chief Judicial Magistrate. It is against both these orders the present Special Criminal Application is preferred.

I have heard Mr.Nigam Shukla, learned Addl.Public Prosecutor, appearing for the petitioner-State. Apart the fact that the second Revision Application, though filed as Special Criminal Application under Article 227 of the Constitution of India would not be maintainable in law, there is no illegality in the concurrent judgments and orders passed by both the Courts below. Mr.Shuka contended that having regard to the statements of Kamlesh Durlabhji Chavda and Hareshkumar Rasiklal Joshi recorded under section 164 of the Code of Criminal Procedure, there was prima facie case against the accused-persons. Both the Courts below have discussed the statements of both these prosecution witnesses whereby no prima facie case is made out against the respondent-persons. Mr.Nigam Shukla has not been able to assail the concurrent findings of both the Courts below successfully. The incident is of 1983-84. Mr.Shukla is not in a position to say as to what had happened in the criminal trial against the remaining accused persons. Apart that, there is no substance in the present petition. No error apparent on the face of the record in the concurrent judgments is pointed out so as to warrant interference with the impugned judgments and orders.

In the result, the application fails and is rejected. Rule discharged.
